



## WYOMING LEGISLATIVE SERVICE OFFICE

# Memorandum

**DATE** March 24, 2023

**TO** Joint Judiciary Committee

**FROM** Brian Fuller, Senior Staff Attorney

**SUBJECT** Topic Summary: Public Records and Public Meetings in Wyoming

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This summary provides background information on the discretionary "records of investigation" exception to the Wyoming Public Records Act in light of the request from the Department of Corrections to review this exception and consider whether Department investigations should be included in the exception.

### **Approved Interim Topic**

#### Priority #3—Department of Corrections Issues

*The Committee will study and review Department of Corrections investigation reports and the Wyoming Public Records Act and correctional compacts.*

### **Exceptions to the Public Records Act**

Generally, all public records "shall be open for inspection by any person at reasonable times, during business hours of the governmental entity, except as provided in this act."<sup>1</sup> The Public Records Act clarifies that all public records must "be released not later than thirty (30) calendar days from the date of acknowledged receipt of the request."<sup>2</sup> But the Public Records Act contains exceptions and grounds for denying the right of inspection of public records. As it pertains to the exceptions and grounds for denial, the Wyoming Supreme Court has liberally interpreted the Public Records Act to favor disclosure—noting that the "object of the public records act is disclosure, not secrecy"—and that

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<sup>1</sup> W.S. 16-4-202(a).

<sup>2</sup> W.S. 16-4-202(c)(iii).

exceptions are to be construed narrowly."<sup>3</sup> The Court has recognized that the language of these provisions "imposes a legislative presumption which says that, where public records are involved, the denial of inspection is contrary to the public policy, the public interest and the competing interests of those involved."<sup>4</sup>

For exceptions, the Act first provides that a governmental entity must allow any person the right of inspection of public records unless:

- "The inspection would be contrary to state statute;
- The inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; or
- The inspection is prohibited by rules promulgated by the supreme court or by the order of any court of record."<sup>5</sup>

For at least one of these exceptions (the federal-statute exception), the Court has looked to the governmental entity to point to a statute or regulation to which release of information would be contrary.<sup>6</sup>

#### Discretionary Exceptions

Second, the Public Records Act allows a governmental entity's custodian of public records discretion to "deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest."<sup>7</sup> This section uses the word "may," making the ability to deny records under these exceptions discretionary.<sup>8</sup>

A description of the discretionary exception for records of investigations follows:

W.S. 16-4-203(b)(i): Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, the

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<sup>3</sup> Houghton v. Franscell, 870 P.2d 1050, 1052 (Wyo. 1994).

<sup>4</sup> Sheridan Newspapers v. Sheridan, 660 P.2d 785, 796 (Wyo. 1983).

<sup>5</sup> W.S. 16-4-203(a)(i)–(iii).

<sup>6</sup> See Wyo. Dep't of Transp. V. Int'l Union of Operating Eng'rs Local Union 800, 908 P.2d 970, 973 (Wyo. 1995).

<sup>7</sup> W.S. 16-4-203(b)(intro).

<sup>8</sup> See Rawson v. State, 900 P.2d 1136, 1138 (Wyo. 1995) (stating that the term "may" connotes permissive authority and does not structure a mandatory requirement).

attorney general, the state auditor, police department or any investigatory files compiled for any other law enforcement or prosecution purposes.<sup>9</sup>

The Wyoming Supreme Court has stated that the documents contemplated by this exception are those related to law enforcement and law enforcement and prosecution purposes.<sup>10</sup> The Court has held that a police department cannot deny inspection of entire rolling logs, jail logs, or case reports based on this exception simply because the log or report may contain some exempt material concerning investigations.<sup>11</sup>

This summary is meant to provide a basic overview of the discretionary "records of investigation" exception to the Wyoming Public Records Act. Please let me know if you have any questions or need further information.

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<sup>9</sup> W.S. 16-4-203(b)(i).

<sup>10</sup> Allsop v. Cheyenne Newspapers, 2002 WY 22, ¶ 23, 39 P.3d 1092, 1099 (Wyo. 2002).

<sup>11</sup> Sheridan Newspapers v. Sheridan, 660 P.2d 785, 797, 799 (Wyo. 1983).